

STATE OF MICHIGAN
COURT OF APPEALS

JAYNE LYNN CAMPBELL,

Plaintiff-Appellant,

v

CRAIG KEVIN CAMPBELL,

Defendant-Appellee.

UNPUBLISHED

July 2, 1999

No. 210256

Kent Circuit Court

LC No. 97-07903-DO

Before: Hoekstra, P.J., and Saad and R. B. Burns*, JJ.

PER CURIAM.

Plaintiff appeals from the circuit court's judgment of divorce. Plaintiff contends that the court's property division was inequitable, because the court awarded to defendant ninety-three percent of the marital estate and to plaintiff only seven percent of the estate. We agree. We reverse and remand for reconsideration.

Plaintiff and defendant were married in 1994. They experienced marital difficulties that included defendant's infertility and plaintiff's infidelity and which culminated in plaintiff filing for divorce in 1997. The parties had no children. Their largest marital asset was defendant's profit sharing and 401(k) plans ("defendant's pension plans") which had increased in value during the course of the parties' marriage. The parties' other assets included a house which they purchased before the marriage, two vehicles, an income tax refund and joint bank accounts. In the judgment of divorce, the trial court divided the equity of the parties' house equally and awarded defendant the majority of the income tax refund and the contents of the joint bank accounts, reasoning that plaintiff's smaller contribution toward the down payment on the house was offset by awarding defendant a greater share of other assets. However, the trial court did not award plaintiff any interest in defendant's pension plans, finding that plaintiff was at fault for the divorce and did not contribute to the assets.

This Court reviews a trial court's findings of fact regarding property division in a divorce judgment for clear error and then determines "whether the ultimate dispositional ruling was fair and equitable in light of the facts, reversing the disposition only if [it is] left with the firm conviction that the

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

distribution was inequitable.” *Byington v Byington*, 224 Mich App 103, 109; 568 NW2d 141 (1997). The assets earned by a spouse during the marriage are properly considered part of the marital estate. *Vander Veen v Vander Veen*, 229 Mich App 108, 110; 580 NW2d 924 (1998). While a division of property in a divorce case does not need to be equal, it must be equitable or “roughly congruent.” *Jansen v Jansen*, 205 Mich App 169, 171; 517 NW2d 275 (1994). “Any significant departure from that goal should be supported by a clear exposition of the trial court’s rationale.” *Id.*, quoting *Knowles v Knowles*, 185 Mich App 497, 501; 462 NW2d 777 (1990).

In *Johnson v Johnson*, 346 Mich 418, 431 78 NW2d 216 (1956), the Court said:

The portion of property awarded to each party depends upon all the equitable factors involved, including the following: source of property, contribution towards its acquisition, the years of married life, the needs of the parties, their earning ability and also the cause for divorce.

In *Sparks v Sparks*, 440 Mich 141, 158; 485 NW2d 893 (1992), the Court held that fault remains a factor in a property settlement, but it is not the only factor. The trial court must consider all the relevant factors and not assign disproportionate weight to any one circumstance. Citing to *Johnson*, *supra*, the *Sparks* Court set forth additional factors which may be relevant to the disposition of assets:

We hold that the following factors are to be considered wherever they are relevant to the circumstances of the particular case: (1) the duration of the marriage, (2) contributions of the parties to the marital estate, (3) age of the parties, (4) health of the parties, (5) life status of the parties, (6) necessities and circumstances of the parties, (7) earning abilities of the parties, (8) past relations and conduct of the parties, and (9) general principles of equity. . . . There may even be additional factors that are relevant to a particular case. [*Id.* at 159-160. Citations omitted.]

Although the trial court can consider the source of funds in dividing property, the source of pension benefits should not be determinative, because contributions which accrue during the marriage are considered part of the marital estate subject to award by the court. MCL 552.18(1); MSA 25.98(1).

In the present case, the trial court’s division of the parties’ equity in the house, vehicles, tax refund and joint bank accounts appeared “roughly congruent.” However, the trial court did not divide defendant’s pension plans in the same manner. Rather, after applying the equitable factors set forth in *Johnson*, *supra* at 431, the court awarded defendant the full amount of the pension plans. In applying the *Johnson* factors, the trial court concluded that plaintiff was not entitled to any interest in the plans because: (1) defendant was the source of the funds; (2) plaintiff had no specific needs which necessitate her having the funds; (3) although the cause of the divorce was not “crystal clear,” plaintiff’s two admitted extramarital affairs “exacerbated what may have already been a bad situation” and by a preponderance of the evidence made her the cause of the divorce; (4) plaintiff has full-time employment; (5) the parties had a short marriage; and (6) defendant worked hard for the money.

We find that the trial court erred when it applied an inconsistent standard in dividing the property. The court awarded the parties approximately equal shares in the less valuable marital assets, but declined to award plaintiff any interest in defendant's pension plans which constituted the bulk of the marital estate. The court failed to distinguish between the parties' marital and separate assets. *Peeves v Reeves*, 226 Mich App 490, 493-494; 575 NW2d 1 (1997). We find that the trial court gave disproportionate weight to the fact that plaintiff did not contribute to defendant's pension plans, when it concluded that defendant worked hard for the money, and it did not "see any reason why [plaintiff] should share in those proceeds."

It does not appear from the record that the trial court considered the income which plaintiff brought into the marriage or that plaintiff terminated her full-time employment upon agreement of the parties. Because the amount of plaintiff's income during the marriage is relevant to the amount of money which defendant could contribute to his pension plans, we conclude that the trial court did not apply general principles of equity when it awarded defendant that part of the pension plans which accrued during the marriage without considering plaintiff's contribution to the marital income. *Sparks, supra*.

Furthermore, the trial court considered plaintiff's infidelity only in regard to the division of defendant's pension plans, and then denied plaintiff any interest in the plans. In light of the trial court's comments regarding plaintiff's extramarital affairs, it appears that the court was punishing plaintiff for her infidelity. We consider the trial court's action inappropriate, because the court's role in dividing the property in a divorce action "is to achieve equity, not to 'punish' one of the parties." *Sands v Sands*, 442 Mich 30, 36-37; 497 NW2d 493 (1993). Although the trial court concluded that plaintiff was more responsible for causing the divorce than defendant, this single factor should not dominate the court's analysis so as to preclude plaintiff from receiving an equitable share of the parties' marital assets. *Sparks, supra* at 158.

The record in this case leaves us with a firm conviction that the trial court's distribution was inequitable.

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Joel P. Hoekstra
/s/ Henry William Saad
/s/ Robert B. Burns